REMARKS

The Applicants wish to thank the Examiner for thoroughly reviewing and considering the pending application. The Office Action dated September 13, 2006 has been received and carefully reviewed. Claims 1 and 5 have been amended and no claims have been canceled. Thus, claims 1, 2, 4-7 and 10 are currently pending. Reexamination and reconsideration are respectfully requested.

On page 2 of the Office Action, claims 2, 5-7 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12, 17, 18 and 22 of the copending divisional Application No. 10/981,574. The Office Action on page 8 asserts that a reply to the provisional rejection under obviousness-type double patenting should be addressed. The Applicants respectfully submit that M.P.E.P. § 804 does not require that the Applicants address the provisional double patenting rejection at this stage of the prosecution. Accordingly, the Applicants will address the provisional double patenting rejection when the provisional double patenting rejection is the only rejection remaining in this application, or the other application issues into a patent.

On page 3 of the Office Action, claims 1 and 4 are rejected as being unpatentable over Admitted Prior Art ("APA") in view of JP 6-1411982 ("*Hara*") or US 5,802,957 ("*Wanat*") and further in view of US 5,126,536 ("*Devlin*"). The Applicants respectfully traverse the rejection.

As required in Chapter 2143.03 of the M.P.E.P., in order to "establish *prima facie* obviousness of the claimed invention, all the limitations must be taught or suggested by the prior art." The Applicants respectfully submit that none of the references cited in the Office Action, either singularly or in combination, disclose each and every element recited in claims 1 and 4.

In particular, claim 1 recites, among other features, a memory configured to store a voltage level that is applied to a heater, and a microprocessor configured to read the voltage level stored in the memory and to control toasting time by combining a first, a second and a third time period, wherein the first time period corresponds with the toaster function, wherein the second time period corresponds with the temperature inside the toaster, and the third time period corresponds with the voltage level read by the microcomputer.

The Office Action at page 4 acknowledges that *APA, Hara*, and *Wanat* do not disclose or suggest the above-noted features of claim 1. The Applicants further submit that *Devlin* does not compensate for the deficiencies of *APA, Hara*, and *Wanat*.

Devlin instead discloses a potentiometer 22 that can be used by a user to control a voltage input to a "warmup" comparator 24 and a "done" comparator 26. In this manner, the user can control a desired level of browning of a bread. See col. 6, line 27-col. 7, line 47. Nowhere does *Devlin* disclose or suggest the above-noted features of claim 1. Therefore, claim 1 recites patentable subject matter.

Furthermore, the Office Action acknowledges that none of the references, singularly or in combination, teaches or suggests "combining" the time periods as recited in claim 1. See page 5 of the Office Action. However, the Office Action alleges that "[t]o separately determine different heating periods before combine [sic] them into a total resultant time period would have been a mere intermediate step of programming the control method but a*dds little patentability weight* to the claimed combined toaster and microwave oven."

The Applicants reiterate the argument made in the previous Response dated June 26, 2006. Specifically, the Applicants disagree that "combining" time periods is unimportant and insignificant because, by combining different heating periods, the combined toaster and

microwave oven allows for a more accurate final toasting time period than would otherwise be determined.

For at least the reasons set forth above, the Applicants respectfully submit that claim 1 is patentable over the *APA*, in view of *Hara* or *Wanat*, and further in view of *Devlin*. Likewise, claim 4 which depends from claim 1, is also patentable for at least the same reasons. Accordingly, withdrawal of the rejection is respectfully requested.

On page 3 of the Office Action, claims 2, 5-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of US 5,128,521 ("*Lanno*"). The Applicants traverse this rejection.

Claim 2 depends from claim 1 and incorporates by reference all of the limitations of claim 1. As previously discussed, *APA*, *Hara*, *Wanat* and *Devlin*, singularly or in combination, does not disclose or suggest all the features of claim 1. *Lanno* does not cure this deficiency. Specifically, the Office Action at page 8 acknowledges this. Therefore, since claim 2 depends from claim 1, Applicants respectfully submit that claim 2 is patentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of *Lanno*.

Independent claim 5 recites a method for operating a combined toaster and microwave oven by a microcomputer that , among other features, recites reading a voltage level that is applied to a heater from memory, and setting a toasting time period based on a selected toaster function, an inside temperature of the toaster and the voltage level read from the memory.

For reasons as discussed with respect to claim 1, none of the references relied upon in the Office Action, either singularly or in combination, discloses or suggests the above-noted features of claim 5. Nor do any of the references teach or suggest combining the time periods. Similarly,

Lanno does not cure this deficiency. Thus, claim 5 is patentably distinguishable over the *APA*, *Hara*, *Wanat*, *Devlin*, and *Lanno*.

Finally, the Applicant would like to again address the issue of obviousness. The Examiner has provided no basis as to why one of ordinary skill would have been motivated to combine the various references relied on in this rejection. Instead, the Office Action simply concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *APA* as modified above to control the toasting operation according to the kind, the toast voltage level and the time elapsed between the toasting operation for better toasting control and result, in view of the teaching of *Lanno*." As stated above, it is improper to deem a claim obvious in view of multiple references without establishing motivation.

Accordingly, for at least the reasons set forth above, the Applicants respectfully submit that claim 5 is patentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of *Lanno* Likewise, claims 6-7 and 10 which depend from claim 5, are also patentable for at least the same reasons as discussed above. The Applicants therefore request that the Examiner withdraw the rejection of claims 1, 2, 5-7 and 10.

The application is in a condition for allowance and favorable action is respectfully solicited. If for any reason the Examiner believes a conversation with the Applicant's representative would facilitate the prosecution of this application, the Examiner is encouraged to contact the undersigned attorney at (202) 496-7500. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

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Attachments